

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: August 18, 2004

Division: County Clerk

Bulk Item: Yes X No

AGENDA ITEM WORDING: Consideration by the Board to rescind Resolution No. 116-2004 concerning a Subordination Agreement and Allonge to Promissory Note in support of Tradewinds Hammocks, Ltd. Affordable Housing.

ITEM BACKGROUND: Item (M14) was approved at the March 17, 2004 Board meeting, but never received by the Clerk for execution. Rick Casey with the Monroe County Housing Authority has advised our office that he has had no success in having this document returned for execution by the other parties involved.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST:

BUDGETED: Yes ___ No ___

COST TO COUNTY:

SOURCE OF FUNDS: ___

REVENUE PRODUCING: Yes ___ No ___ **AMOUNT PER MONTH** ___ **Year** ___

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ___

DIVISION DIRECTOR APPROVAL:

Danny L. Kolhage by: icd
Danny L. Kolhage, Clerk

DOCUMENTATION: Included X To Follow ___ Not Required ___

DISPOSITION: _____ **AGENDA ITEM #** M6

RESOLUTION _____ - 2004

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, APPROVING A SUBORDINATION AGREEMENT AND ALLONGE TO PROMISSORY NOTE IN SUPPORT OF TRADEWIND HAMMOCKS, LTD, AFFORDABLE RENTAL HOUSING.

WHEREAS, Monroe County has provided SHIP funding assistance in the amount of \$75,000.00 in the form of a mortgage loan to Tradewinds Hammocks, Ltd., in support of the construction of Tradewinds Hammocks, a 66 units of affordable rental housing in Key Largo; and,

WHEREAS, the Tradewinds Hammocks, Ltd. is seeking to convert existing construction debt to permanent long term financing in order to stabilizing debt service and continue to ensure long term affordability of the project, and

WHEREAS, said transaction would require that Monroe County subordinate the existing SHIP Program mortgage to the new permanent financing by the execution of a Subordination Agreement and Allonge to Promissory Note.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Monroe County, Florida, that the County hereby:

Authorizes the execution of the Subordination Agreement and Allonge to Promissory Note as attached hereto as Exhibit A.

PASSED AND ADOPTED, by the Board of County Commissioners of Monroe County, Florida at a regular meeting on said Board on the _____ day of _____, A.D., 2004.

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

Mayor Nelson _____
Commissioner Spehar _____
Commissioner Neugent _____
Commissioner McCoy _____
Commissioner Rice _____

By:

Mayor Nelson

SEAL

ATTEST:

Approved as to form and legal sufficiency:

MONROE COUNTY ATTORNEY

APPROVED AS TO FORM:

Date: _____

SUZANNE A. HUTTON

ASSISTANT COUNTY ATTORNEY

Date: _____

Subordinate Loan and to have a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

D. The Senior Lender intends to sell, transfer and deliver the First Mortgage Note and assign the First Mortgage to Fannie Mae.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to maintain the Subordinate Loan to the Borrower and to have a subordinate mortgage lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a First Mortgage Loan Default has occurred under the First Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

2. Permission to Place Mortgage Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the First Mortgage Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender have the recorded Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which are subordinate in all respects to the lien of the First Mortgage) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to the Borrower. If any of the representations and warranties made by the Borrower and the Subordinate Lender in Section 3 is not true and correct on both of those dates, the provisions of the First Mortgage Loan Documents applicable to unpermitted liens on the Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

(a) **Subordinate Note.** The Subordinate Note contains the following provision:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Multifamily Note dated as of _____, 2004 in the original principal amount of \$1,501,026.00 issued by Tradewinds Hammocks, Ltd. ("**Borrower**") and payable to Midland Mortgage Investment Corporation ("**Senior Lender**"), or order, to the extent and in the manner provided in that certain Subordination Agreement dated effective as of _____, 2004 entered into among the payee of this Note, and the Senior Lender and Borrower (the "Subordination Agreement"). The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage securing the Multifamily Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's

Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the First Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the First Mortgage.

(c) Payments Before First Mortgage Loan Default. Until the Subordinate Lender receives a Default Notice of a First Mortgage Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After First Mortgage Loan Default. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a First Mortgage Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the First Mortgage Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the First Mortgage Loan Documents in accordance with the provisions of the First Mortgage Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse

Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions contained in the Land Use Restriction Agreement.

(c) **Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a First Mortgage Loan Default under the First Mortgage Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the First Mortgage Loan Documents in the same manner as in the case of any other First Mortgage Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the First Mortgage Loan Documents, any First Mortgage Loan Default under the First Mortgage Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the First Mortgage Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such First Mortgage Loan Default.

6. Default Under First Mortgage Loan Documents.

(a) **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such First Mortgage Loan Default within 60 days following the date of such notice; provided, however, that the Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the First Mortgage Loan Documents. Subordinate Lender may have up to 90 days from the date of the Default Notice to cure a non-monetary default if during such 90-day period Subordinate Lender keeps current all payments required by the First Mortgage Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a First Mortgage Loan Default shall be deemed to

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure First Mortgage Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the First Mortgage Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees

11. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Midland Mortgage Investment Corporation
33 North Garden Avenue, Suite 1200,
Clearwater, Florida 33755
Attention: Tom Vandegrift

With a copy to:

Fannie Mae
Attention: Multifamily Operations - Asset Management
Drawer AM
3900 Wisconsin Avenue, N.W.
Washington, DC 20016

SUBORDINATE LENDER:

County of Monroe
c/o Special Programs Office
1403 12th Street
Key West, Florida 33040
Attention: SHIP Program

and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the First Mortgage; or (iv) the acquisition by the Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

WITNESSES:

MIDLAND MORTGAGE INVESTMENT CORPORATION, a Florida corporation

Print Name: _____

By: _____

Name: _____

Print Name: _____

Title: _____

_____) ss.
COUNTY OF _____)

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, _____, as _____ of County of Monroe, a _____, to me personally known, or who furnished to me Driver's License # _____ or _____ as proof of identity, to be the person described in and who executed the foregoing instrument and duly acknowledged before me that he/she executed the same for the purposes therein expressed as the act and deed of said public corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at _____, Florida, said County and State, this _____ day of _____, A.D., 2004.

Notary Public - State of Florida

Print Name of Notary Public:

My commission expires: _____

[seal]

BORROWER:

WITNESSES:

TRADEWINDS HAMMOCKS, LTD.,
a Florida limited partnership

By: Heritage Partners Group XIX, Inc.
a Florida corporation
Its: General Partner

Print Name: _____

Print Name: _____

By: _____

Its: _____

ALLONGE TO PROMISSORY NOTE

THIS ALLONGE TO PROMISSORY NOTE ("Allonge") is made effective as of the _____ day of _____, 2004 by **TRADEWINDS HAMMOCKS, LTD.**, a Florida limited partnership, whose address is 5505 North Atlantic Avenue, Suite 115, Cocoa Beach, Florida 32931 ("Borrower"), to and for the benefit of the **COUNTY OF MONROE**, a political subdivision of the State of Florida, whose address is 500 Whitehead Street, Key West, Florida 33040 ("Holder").

WITNESSETH:

WHEREAS, Borrower is indebted to the Holder pursuant to, and in accordance with, that certain Promissory Note dated effective as of December 3, 2002 in the principal amount of \$75,000 executed by Borrower in favor of the Holder ("Note").

WHEREAS, the Note is secured by that certain Mortgage dated as of December 3, 2002, given by Borrower in favor of Holder (the "Mortgage"), which Mortgage has or is being recorded in the recorders office for the County of Monroe, Florida and encumbers certain property located in the City of Key Largo, Monroe County, Florida, as more particularly described therein ("Development").

WHEREAS, Borrower is executing and delivering this Allonge in order to confirm the fact that the Note and Mortgage are subordinate to that certain Multifamily Note in the principal amount of \$1,501,026.00 dated effective as of _____, 2004 ("Multifamily Note") given by Borrower in favor of Midland Mortgage Investment Corporation, a Florida corporation ("Senior Lender"), and that certain Multifamily Mortgage, Assignment of Rents and Security Agreement ("Multifamily Mortgage") dated effective as of _____, 2004 given by Borrower in favor of Senior Lender, which encumbers the Development and has been or is being recorded in the Monroe County Records, pursuant to a Subordination Agreement among Borrower, Senior Lender and Holder to be recorded in the recorders office of Monroe County.

NOW, THEREFORE, the Borrower ratifies the Note and agrees as follows:

1. This Allonge is to be physically attached to the Note and is incorporated into and forms a part of the Note.
2. All references in the Note and the Mortgage to the term "Note" shall mean the Note as amended and endorsed by this Allonge.

instrument evidencing or securing the obligations of the Borrower under this Note."

5. Except as amended hereby, the Note is restated and republished in its entirety and remains in full force and effect and shall be binding upon Borrower, its representatives, successors and assigns.

IN WITNESS WHEREOF, Borrower has executed this Allonge as of the date and year first written.

BORROWER:

TRADEWINDS HAMMOCKS, LTD.,
a Florida limited partnership

By: Heritage Partners Group XIX, Inc.
a Florida corporation
Its: General Partner

By: _____

Its: _____

Delivery acknowledged and accepted this ____ day of _____, 2004 by the County of Monroe.

COUNTY OF MONROE

By: _____

Its: _____

DET_C\601810.1

Tradewinds Hammocks